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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,601	11/01/2002	John McIsaac	P02-210-MC1	5958
27107	7590	06/24/2004	EXAMINER	
RICHARD A. JOEL ESQ. 496 KINDERKAMACK ROAD ORADELL, NJ 07649			DEL SOLE, JOSEPH S	
			ART UNIT	PAPER NUMBER
			1722	
DATE MAILED: 06/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/065,601	Applicant(s) MCISAAC ET AL.	
	Examiner Joseph S. Del Sole	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4 and 6 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 2,5 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 7-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** an indication of traverse in the reply filed on 5/13/04 and will be treated as an election without traverse.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference character(s) mentioned in the description: 21 (page 4, line 2), 23 (page 4, line 4) and 32 (page 4, line 14). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitation of claim 2, namely "a plurality of iris diaphragms," must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. claim 12 is an apparatus claim and as such must further limit the parent claims by further limiting structural features of the claimed apparatus. By merely claiming the products produced by the apparatus, without reciting structural limitations, the claim is not further limiting.

Art Unit: 1722

5. Claims 2 and 5 are objected to because of the following informalities: **a)** at claim 2, lines 3-4 "function simultaneously shaping and portioning food product" is grammatically incorrect and **b)** "servo device" at claim 5, line 8 should match the phrasing of "servo drive" at claim 5, line 9 (as such, the Examiner interprets "servo device" and "servo drive" as being drawn to the same structure. Appropriate correction is required.

Specification

6. The disclosure is objected to because of the following informalities: **a)** the specification does not include a description describing the structures defined by claim 2, namely "a plurality of iris diaphragms coupled to the gearbox to function simultaneously shaping and portioning food product (as Examiner specified above, claim 2 is not grammatically correct).

Appropriate correction is required.

Allowable Subject Matter

7. Claims 1-6 are allowed pursuant to the correction of informal matters discussed above.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest an apparatus for producing nonsymmetrical tree dimensional products having an iris diaphragm for shaping; a gear box with a plurality of gears connected to the iris diaphragm for opening and closing the diaphragm; a motor connected to the gearbox to drive the gearbox with either **a)** a vector drive controlling the motor and an encoder providing signals to the vector drive

Art Unit: 1722

directing the operation of the motor or **b)** a servo device (drive) controlling the motor and an encoder providing signals to the servo drive (device) directing the operation of the motor. The closest prior art, Otte (6,257,863), does teach an iris diaphragm for shaping a product and having a motor to operate the iris diaphragm but fails to teach a gearbox between the iris diaphragm and the motor and further fails to teach an encoder providing signals to either a vector drive or servo drive (device) to direct the operation of the motor. Denney (6,477,931) teaches a motor's speed controlled by an encoder but fails to teach motivation for combination of the motor and encoder of Denney with the motor of Otte.

Conclusion

9. This application is in condition for allowance except for the following formal matters:

- a)** claims 7-11 non-elected without traverse must be cancelled;
- b)** reference numerals 21, 23 and 32, all of which are found in the drawings, must be added to the drawings;
- c)** the grammatically awkward phrasing of claim 2 must be corrected;
- d)** the disparate phrasing ("servo device" and "servo drive") of claim 5 must be corrected; and
- e)** the limitation of claim 2 must be included in the specification and the drawing.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Art Unit: 1722

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Joseph S. Del Sole
J.S.D.
June 21, 2004

[Signature]
ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300 / 1700

6/23/04